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SUBJECT: THIRD ROUND OF U.S.-GERMAN "PRUEM" DISCUSSIONS

REF: A. BERLIN 399
[1](#)B. BERLIN 59

Classified By: Minister-Counselor for Economic Affairs Robert F. Cekuta
for reasons 1.4 (b) and (d)

[1](#)1. (C) Summary: German and U.S. officials met April 4 on the margins of the U.S.-EU Troika meetings in Berlin for the third round of face-to-face discussions on a data-sharing agreement modeled on the European "Pruem" Convention. (Note: Additional discussion has taken place via videoconference. End Note.) The German delegation indicated Germany would like to go beyond "hit/no-hit" queries and include mechanisms in our bilateral agreement to allow more systematic exchange of biographic data on known or suspected terrorists. The two sides reached an understanding that various degrees of data-exchange would require different levels of protection. A remaining open issue is the extent to which data collected for "preventative purpose" could be used for subsequent criminal prosecutions without the need for express approval from the state that provided the data. Both sides agreed to review their respective drafts in light of the discussion and to reconvene (via teleconference) on April 16. (Note: just prior to that date, the German side requested a delay until mid-May. End Note.) End Summary.

[1](#)2. (C) On April 4, German and U.S. officials reviewed progress toward concluding a bilateral agreement modeled on the data-sharing provisions of the Pruem Convention. The German delegation was headed by Andreas Schultz, Director of the Interior Ministry's Office for Police Information Technology. The German delegation also included representatives from the Ministry of Justice, the Federal Office of Criminal Investigation and the Office of the Federal Data-Protection Commissioner. Deputy Assistant Attorney General Bruce Swartz led for the U.S. side. The U.S. delegation also included additional representatives from DHS, DOJ, and Embassy Berlin.

[1](#)3. (C) The discussion focused on data-protection, with the German side asking how far the U.S. could go in putting into our bilateral agreement the actual data-protection provisions of the Pruem Treaty itself (since these provisions had already passed muster with the German parliament). In particular, the Germans asked if the U.S. could accept text along the lines of Pruem Article 34, which obligates parties to ensure a level of data-protection as set forth in the Council of Europe (COE) Convention. The U.S. side agreed to take a closer look at the Pruem provisions, but asked the Germans to provide us with their bottom line data-protection requirements for the initial "hit/no-hit" information exchange we look to formalize in our bilateral agreement.

14. (C) Swartz made the point that the initial "hit/no-hit" info request does not involve sharing of personal data, and that once we are past the "hit/no-hit" query stage, any subsequent request for more specific personal information would be governed by the data-protection provisions of the U.S.-EU MLAT and other legal assistance agreements or existing mechanisms for sharing. He suggested we might be able to reference our data-protection commitments as set forth in the U.S.-EU instruments or further explain what protections would apply to the "hit/no-hit" info in the operational annex, but that we would not be able to bind ourselves to the COE Convention. The Germans agreed to consider this point, but noted that political constraints would likely require that the issue be addressed in the agreement text not an annex. The MOJ emphasized that in cases where either party could tie the fingerprint used for the comparison to a person's identity that Germany must consider it personal information, even if further details had not yet been exchanged. Schultz also expressed concern that the U.S. contemplates using "hit/no-hit" data for "broader" purposes than Germany. Such a situation, the German side said, would cause problems for Germany. Swartz said our intent is not to use "hit/no-hit" data for purposes beyond the initial querying and that the uses detailed in Article 16 of the U.S. draft were intended to provide greater transparency about the appropriate uses of data exchanged under Article 15. He said we will look again at Pruem Article 35 (governing the purposes for which collected data may be used), but believed a solution can be found.

15. (C) Schultz indicated Germany is ready to go beyond "hit/no-hit" queries and to consider sharing biographic data

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on known or suspected "dangerous individuals" with the U.S., as Germany already shares with other signatories of the Pruem Convention. Schultz proposed adopting provisions along the lines of Article 16 of the Pruem Convention, which provides for the "spontaneous" exchange of personal data on individuals when there is reason to believe they might commit criminal offenses within the meaning of the Convention. In such cases, the data provided would be the name, date and place of birth, and a description of the circumstances supporting the determination that the individual is "dangerous." Schultz noted, however, that in order to take this step Germany must have a more ample "legal underpinning" as regards data-protection to overcome possible constitutional questions. Swartz suggested different "levels" or exchanges might be subject to different data-protection rules. The German officials accepted this position in other, subsequent conversations as well.

16. (C) Another open issue was the extent to which data collected for "preventative purpose" could be used for subsequent criminal prosecutions without the need for express approval from the state that provided the data. The Germans want to specify that certain information be used solely to "prevent terrorist offenses" (per Pruem Convention Art. 16). Swartz pointed out that our understanding is that using information for "criminal investigations and proceedings" (our suggested language) is an essential tool for preventing terrorist acts and such a core purpose of our proposed bilateral agreement.

17. (C) Schultz noted that the Pruem Convention imposes clear limits on the purposes for which personal data can be used without the express consent of the party that provided the data. He stressed that Pruem does not prohibit the wider use of personal data or its dissemination to various agencies in the receiving state, but merely makes such broader use/dissemination subject to the affirmative consent of the providing state. Schultz indicated this would be a "tough point" for the Germans, but undertook to review the issue in the German interagency community.

18. (U) This message was cleared by DOJ and DHS participants subsequent to their departure from Berlin.
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